

Internal Revenue Service

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Department of the Treasury

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

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Date:

September 29, 2006

Legend:

Taxpayer =

Plant =

Unit A =

Unit B =

State =

Intermediate =

Holding Company =

Parent =

Date One =

Date Two =

Commission =

Year A =

Year B =

Year C =

Year D =

Year E =

Year F =

Year G =

Year H =

Year I =

a1 =

a2 =

a3 =

a4 =

a5 =

b1	=
b2	=
c1	=
c2	=
c3	=
c4	=
e1	=
e2	=
e3	=
e4	=
e5	=
g1	=
g2	=
g3	=
g4	=
g5	=
h1	=
h2	=
h3	=
i1	=
i2	=
i3	=
i4	=
i5	=
i6	=
j1	=
j2	=
j3	=
j4	=

Dear _____ :

This letter responds to Taxpayer's submission, dated November 28, 2005, and subsequent correspondence, requesting a private letter ruling concerning the tax consequences of certain contributions and withdrawals from qualified nuclear decommissioning funds maintained by the taxpayer for its interest in Unit A and Unit B of the Plant.

Taxpayer has represented the following facts and information relating to the ruling request:

Taxpayer, a limited partnership organized under the laws of State, is indirectly owned through limited liability companies by Intermediate. Intermediate is a wholly-owned subsidiary of Holding Company. Taxpayer represents that Company and the limited liability companies are all disregarded entities for Federal income tax purposes. Intermediate is a limited liability company treated as a partnership for Federal income tax purposes. Currently, all of the members of Intermediate are members of an affiliated group of which Parent is the common parent.

On Date One, as part of a corporate restructuring, Holding Company transferred the Plant and associated assets, including nuclear decommissioning funds, to Taxpayer. Decommissioning costs continue to be collected from ratepayers as authorized by the Commission. For periods following the corporate restructuring, the collection has been accomplished through a non-bypassable charge imposed upon retail customers that is collected by a direct or indirect wholly-owned subsidiary of Parent and remitted directly to Taxpayer or its nuclear decommissioning funds.

Taxpayer has conducted a review of its records and has discovered inconsistencies between the amounts deemed to have been contributed to the qualified nuclear decommissioning funds maintained on behalf of Unit A and Unit B of the Plant in certain taxable years and the maximum amount permitted to be contributed to the funds in those years. These inconsistencies were due to improper application of the deemed payment election provided under section 1.468A-2(c) of the regulations.

UNIT ONE - CONTRIBUTIONS IN YEARS A THROUGH C

Taxpayer contributed a1 to the qualified nuclear decommissioning fund maintained with respect to Unit A in Year A, and elected to designate a2 of the amount contributed during the period between January 1 and March 15 of Year A as having been contributed to the fund in the previous year. Taxpayer elected to designate a3 of the amount contributed to the fund during the period between January 1 and March 15 of Year B as having been contributed in Year A, resulting in a total of a4 being deemed as having been contributed in Year A. The lesser of the cost of service amount and the amount from the schedule of ruling amounts (the "Contribution Limitation") for Year A is a5. As a result of the amount of Year B contributions deemed to be contributed in Year A, Taxpayer's deemed total contributions to the fund for Year A exceeded the Contribution Limitation for Year A. However, the actual contributions for Year A, reduced by a2, did not exceed a5. Taxpayer represents that the excess deemed contribution amount was not the result of accelerated actual contributions and did not result in any excess earnings for the fund in Year A or any subsequent year. Further, Taxpayer represents that it deducted only a5 in Year A for contributions made to the fund in that year. In addition, Taxpayer represents that if Taxpayer had calculated its deemed contribution amounts differently it would not have exceeded its Contribution Limitations in Year A or Year B.

Taxpayer contributed b1 to the qualified nuclear decommissioning fund maintained with respect to Unit A in Year B, and elected to designate a3 of the amount contributed during the period between January 1 and March 15 of Year B as having been contributed to the fund in the Year A. Taxpayer did not elect to designate any amount contributed to the fund during the period between January 1 and March 15 of Year C as having been contributed in Year B, resulting in a total of b2 being designated as having been contributed in Year B. The Contribution Limitation for Year B is b1. This resulted in the deemed payments to the fund being a3 less than the Contribution Limitation for Year B.

Taxpayer contributed c1 to the qualified nuclear decommissioning fund maintained with respect to Unit A in Year C, and did not elect to designate any amount contributed during the period between January 1 and March 15 of Year C as having been contributed to the fund in the Year B. Taxpayer elected to designate c2 of the amount contributed to the fund during the period between January 1 and March 15 of Year D as having been contributed in Year C, resulting in a total of c3 being designated as having been contributed in Year C. The Contribution Limitation for Year C is c4. As a result of the amount of Year D contributions deemed to be contributed in Year C, Taxpayer's deemed total contributions to the fund for Year C exceeded the Contribution Limitation for Year C. However, the actual contributions for Year C did not exceed c4. Taxpayer represents that the excess deemed contribution amount was not the result of accelerated actual contributions and did not result in any excess earnings for the fund in Year C or any subsequent year. Further, Taxpayer represents that it deducted only c4 in Year C for contributions made to the fund in that year. In addition, Taxpayer represents that if Taxpayer had calculated its deemed contribution amounts differently it would not have exceeded its Contribution Limitations in Year B or Year C.

Taxpayer represents that the actual contributions for Year A, Year B, and Year C, in the aggregate, less the deemed contribution amount from Year A designated as having been contributed in the previous year, is less than the sum of the Contribution Limitations for Year A, Year B, and Year C. Additionally, when the three years are viewed together, the aggregate amount deemed contributed (actual contributions adjusted by deemed amounts) during the period equals the aggregate Contribution Limitation for the period. In addition, had taxpayer elected to designate less of the amount contributed during the period between January 1 and March 15 of Year B as having been contributed to the fund in the Year A, and elected to designate an appropriate amount contributed during the period between January 1 and March 15 of Year C as having been contributed to the fund in the Year B, Taxpayer's deemed contributions would not have exceeded the Contribution Limitations for those years.

UNIT A - CONTRIBUTIONS IN YEARS E AND G

Taxpayer contributed e1 to the qualified nuclear decommissioning fund maintained with respect to Unit A in Year E, and elected to designate e2 of the amount

contributed during the period between January 1 and March 15 of Year E as having been contributed to the fund in the previous year. Taxpayer elected to designate e3 of the amount contributed to the fund during the period between January 1 and March 15 of the following Year F as having been contributed in Year E, resulting in a total of e4 being designated as having been contributed in Year E. The lesser of the cost of service amount and the amount from the schedule of ruling amounts for Year E is e5. As a result of the amount of the contributions made in Year F deemed to be contributed in Year E, Taxpayer's deemed total contributions to the fund for Year E exceeded the Contribution Limitation for Year E. However, the actual contributions for Year E, reduced by e2, did not exceed e5. Taxpayer represents that the excess deemed contribution amount was not the result of accelerated actual contributions and did not result in any excess earnings for the fund in Year E or any subsequent year. Further, Taxpayer represents that it deducted only e5 in Year E for contributions made to the fund in that year. Taxpayer also represents that if it had not elected to designate any contribution from Year F as having been contributed to the fund in Year E, the deemed payments for Year F would not have exceeded the Contribution Limitation for Year F.

Taxpayer represents that its actual and deemed contributions for Year F were equal to or less than the Contribution Limitation for Year F.

Taxpayer contributed g1 to the qualified nuclear decommissioning fund maintained with respect to Unit A in Year G, and elected to designate g2 of the amount contributed during the period between January 1 and March 15 of Year G as having been contributed to the fund in Year F. Taxpayer elected to designate g3 of the amount contributed to the fund during the period between January 1 and March 15 of Year H as having been contributed in Year G, resulting in a total of g4 being designated as having been contributed in Year G. The lesser of the cost of service amount and the amount from the schedule of ruling amounts for Year G is g5. As a result of the amount of the contributions made in Year H deemed to be contributed in Year G, Taxpayer's deemed total contributions to the fund for Year G exceeded the Contribution Limitation for Year G. However, the actual contributions for Year G, reduced by g2, did not exceed g5. Taxpayer represents that the excess deemed contribution amount was not the result of accelerated actual contributions and did not result in any excess earnings for the fund in Year G or any subsequent year. Further, Taxpayer represents that it deducted only g5 in Year G for contributions made to the fund in that year. In addition, Taxpayer represents that the Year H deemed total contributions were less than the Contribution Limitations for Year H, and that if Taxpayer had calculated its deemed contribution amounts differently, the deemed contribution amount would not have exceeded its Contribution Limitations in either Year G or Year H.

UNIT B - CONTRIBUTIONS IN YEAR E

Taxpayer contributed h1 to the qualified nuclear decommissioning fund maintained with respect to Unit B in Year E, and elected to designate h2 of the amount

contributed during the period between January 1 and March 15 of Year E as having been contributed to the fund in the previous year. Taxpayer elected to designate h2 of the amount contributed to the fund during the period between January 1 and March 15 of the following Year F as having been contributed in Year E, resulting in a total of h1 being designated as having been contributed in Year E. The lesser of the cost of service amount and the amount from the schedule of ruling amounts for Year E is h3. As a result of the amount of the contributions made in Year F deemed to be contributed in Year E, Taxpayer's deemed total contributions to the fund for Year E exceeded the Contribution Limitation for Year E. However, the actual contributions for Year E, reduced by h2, did not exceed h3. Taxpayer represents that the excess deemed contribution amount was not the result of accelerated actual contributions and did not result in any excess earnings for the fund in Year E or any subsequent year. Further, Taxpayer represents that it deducted only h3 in Year E for contributions made to the fund in that year. Taxpayer also represents that if it had not elected to designate any contribution from Year F as having been contributed to the fund in Year E, the deemed contributions for Year F would not have exceeded the Contribution Limitation for Year F.

UNIT B - WITHDRAWAL OF CONTRIBUTIONS IN YEAR H

Taxpayer contributed i1 to the qualified nuclear decommissioning fund maintained with respect to Unit B in Year G, and elected to designate i2 of the amount contributed during the period between January 1 and March 15 of Year G as having been contributed to the fund in the previous year. Taxpayer elected to designate i3 of the amount contributed to the fund during the period between January 1 and March 15 of Year H as having been contributed in Year G, resulting in a total of i4 being designated as having been contributed in Year G. The lesser of the cost of service amount and the amount from the schedule of ruling amounts for Year G is i5. Taxpayer's deemed total contributions to the fund for Year G were i6 less than the Contribution Limitation for Year G.

Taxpayer contributed j1 to the qualified nuclear decommissioning fund maintained with respect to Unit B in Year H, and elected to designate j3 of the amount contributed during the period between January 1 and March 15 of Year H as having been contributed to the fund in the Year G. Taxpayer did not elect to designate any amount contributed to the fund during the period between January 1 and March 15 of Year I as having been contributed in Year H, resulting in a total j2 unadjusted contribution to the fund in Year H. The lesser of the cost of service amount and the amount from the schedule of ruling amounts for Year H is j3. Taxpayer's deemed total contributions to the fund for Year H exceeded the Contribution Limitation for Year H by j4. On Date Two, Taxpayer withdrew j4 from the fund (the "Year H Withdrawal"), resulting in a total adjusted contribution to the fund of j3 in Year H.

REQUESTED RULINGS

Taxpayer has requested that the Service agree not to exercise its discretionary authority to disqualify the qualified nuclear decommissioning funds maintained by the taxpayer with respect to Unit A and Unit B of the Plant, notwithstanding that the deemed contribution to the fund maintained for Unit A exceeded the contribution limitation in Year A, Year C, Year E, and Year G, and notwithstanding that the deemed contribution to the fund maintained for Unit B exceeded the contribution limitation for Year E.

In addition, Taxpayer has requested that the Service agree not to exercise its discretionary authority to disqualify the qualified nuclear decommissioning fund maintained by the taxpayer with respect to Unit B of the Plant as a result of the Year H withdrawal of funds from the qualified nuclear decommissioning fund maintained with respect to Unit B. In addition, because Taxpayer did not claim a Federal income tax deduction for the amount of the Year H withdrawal, Taxpayer need not include the withdrawn funds in income.

LAW AND ANALYSIS

Section 468A(a) and section 1.468A-2(a) provide that a taxpayer that elects the application of section 468A may deduct in the taxable year the election is made any payments made by the taxpayer to a qualified nuclear decommissioning fund in that year.

Former section 468A(b) and section 1.468A-2(b)(1) provide that, for purposes of section 1.468A-2(a), the amount that a taxpayer may pay into a qualified nuclear decommissioning fund for any taxable year shall not exceed the lesser of the amount of nuclear decommissioning costs allocable to the fund which is included in the taxpayer's cost of service for ratemaking purposes for the taxable year, or the ruling amount applicable to fund for that the taxable year. Section 1.468A-2(b)(1) provides further that if the amount of cash payments made (or deemed made) to a qualified nuclear decommissioning fund during any taxable year exceeds the limitation of section 1.468A-2(b)(1), the excess is not deductible by the electing taxpayer.

Section 1.468A-5(a)(2) prohibits a nuclear decommissioning fund from accepting any contribution for which a deduction is not permitted under section 468A(a) and section 1.468A-2(a). Section 1.468A-5(c)(1) provides that, if at any time during a taxable year of a nuclear decommissioning fund the fund does not satisfy the requirements of section 1.468A-5(a), the Service may, in its discretion, disqualify all or any portion of the fund as of the date that the fund does not satisfy the requirements of section 1.468A-5(a).

Section 1.468A-2(c)(2) provides that the amount of any cash payment made by an electing taxpayer to a qualified nuclear decommissioning fund on or before the 15th day of the third calendar month after the close any taxable year shall be deemed made

during that taxable year if the electing taxpayer irrevocably designates the amount as relating to that taxable year on its timely filed Federal income tax return for that taxable year.

Section 1.468A-5(c)(2)(ii) defines an excess contribution for purposes of section 1.468A-5(c)(2) as the amount by which cash payments made (or deemed made) to a qualified nuclear decommissioning fund during any taxable year exceed the payment limitation in former section 468A(b) and section 1.468A-2(b).

Section 1.468A-5(c)(2)(i) provides that a qualified nuclear decommissioning fund will not be disqualified under section 1.468A-5(c)(1) by reason of an excess contribution or the withdrawal of that excess contribution by an electing taxpayer if the amount of the excess contribution is withdrawn by the electing taxpayer on or before the date prescribed by law (including extensions) for filing the return of the fund for the taxable year for which the excess contribution relates.

Section 1.468A-2(d)(2)(ii) provides that the amount of a withdrawal of an excess contribution (as defined in section 1.468A-5(c)(2)(ii)) by an electing taxpayer pursuant to the rules of section 1.468A-5(c)(2) shall not be included in the gross income of the electing taxpayer.

For each taxable year for which Taxpayer's improper designation of deemed contribution amounts resulted in a designated contribution amount in excess of the Contribution Limitation for that year, Taxpayer's actual deduction did not exceed the Contribution Limitation for that year. Additionally, the aggregate contributions over the multi-year periods at issue (the year before Year A through Year H) did not exceed the aggregate Contribution Limitations for such periods, and Taxpayer's earnings on the assets of the fund were not accelerated or enhanced as a result of the actual contributions made to the fund. As such, Taxpayer and its funds did not receive any impermissible tax benefit from the improper designation.

Consequently, notwithstanding that the deemed contribution to the fund maintained for Unit A exceeded the contribution limitation in Year A, Year C, Year E, and Year G, and notwithstanding that the deemed contribution to the fund maintained for Unit B exceeded the contribution limitation in Year E, the Internal Revenue Service will not, under the circumstances outlined above, exercise its discretion to disqualify the qualified nuclear decommissioning funds maintained by Taxpayer with respect to Unit A and Unit B.

In addition, assuming that Taxpayer's returns are filed in a manner consistent with the deemed contributions described in this letter and in the taxpayer's submission, the Service will not exercise its discretion to disqualify all or any part of the nuclear decommissioning fund maintained with respect to Unit B as a result of the Year H Withdrawal. Pursuant to section 1.468A-2(d)(2)(ii), Taxpayer is not required to include

any amount of the Year H Withdrawal in the taxable income of Taxpayer in Year H. Taxpayer may not, however, retribute the amount to the fund for Year H.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Peter C. Friedman
Senior Technician Reviewer, Branch 6
(Passthroughs & Special Industries)